

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JAMES L. BELL,)
)
)
Plaintiff,)
)
)
v.) 1:14CV162
)
)
MS. BARTEE, et al.,)
)
)
Defendant(s).)

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, submitted a civil rights action pursuant to 42 U.S.C. § 1983, together with an application to proceed *in forma pauperis*. The form of the Complaint is such that serious flaws make it impossible to further process the Complaint. The problems are:

1. The filing fee was not received nor was a proper affidavit to proceed *in forma pauperis* submitted, with sufficient information completed or signed by Plaintiff, to permit review. Plaintiff did submit an *in forma pauperis* application, but did not complete the portions of the form asking him to list the current balance of his prison trust account or the total amounts deposited in the last six months. The Court needs this information in order to calculate any initial partial payment of the \$400.00 filing fee in this matter.
2. Plaintiff has not named proper defendants. Plaintiff must name the persons who are actually responsible for the alleged violations of his constitutional rights. Plaintiff, who contends that he is supposed to have an onion-free diet, names “Ms. Bartee,” the food service manager at his prison, as a defendant, and complains of onions in his food on one occasion. However, he does not state any facts demonstrating that Ms. Bartee was responsible for the onions in his food. He cannot assert a claim against her under § 1983 just because she is a supervisor. Plaintiff also names “Medical” as the other defendant in the

case, apparently referring to the medical department in his prison. He must name the person or persons responsible for any alleged constitutional violations, not an entire department.

3. Plaintiff sets out his claims in two complaint forms. He should only use one form. Plaintiff must provide copies for each named defendant and the Court, but they should be copies of the same complaint form, not entirely different forms for each defendant. Also, Plaintiff's claims are unclear and conclusory. For instance, he states that he believes he lost a chance at a work release job because of grievances he filed. However, he does not give any reason why he believes this, nor does he name the persons allegedly responsible. He also claims that eating a small amount of onions caused ringing in his right ear and a burning pain in his chest, but he does not allege facts to suggest that onions could cause these symptoms in him or, more importantly, that the symptoms indicated the type of serious medical need that can support a claim under § 1983.

Consequently, the Complaint should be dismissed, but without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which corrects the defects of the present Complaint. To further aid Plaintiff, the Clerk is instructed to send Plaintiff new § 1983 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Federal Rule of Civil Procedure 8 (*i.e.*, Sections (a) & (d)).

In forma pauperis status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Plaintiff § 1983 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Federal Rule of Civil Procedure 8 (*i.e.*, Sections (a) & (d)).

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which corrects the defects cited above.

This, the 16th day of June, 2014.

/s/ Joi Elizabeth Peake
United States Magistrate Judge